IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.THANKAPPAN

WEDNESDAY, THE 6TH JUNE 2007 / 16TH JYAISHTA 1929

Crl.L.P..No. 272 of 2007()

STC.5278/2005 of JUDICIAL FIRST CLASS MAGISTRATE COURT II, KANNUR

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PETITIONER/COMPLAINANT:

M.V.MAJEED, S/O. HUSSAIN,
RETIRED DYSP., ANJUKANDY, KANNUR.

BY ADVS. SRI.H.BADRUDDIN
SRI.M.A.SHIHAB

RESPONDENTSACCUSED & STATE:

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1. K.P.ABDUL RAZAQU, S/O.MOOSA,
"SEETHALA", PALLIPPAT TEMPLE ROAD,
P.O. CIVIL STATION, KOZHIKODE.

2. STATE OF KERALA, REPRESENTED BY ITS
PUBLIC PROSECUTOR, HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR SRI. S. DILEEP - R2

THIS CRIMINAL LEAVE PETITION HAVING COME UP FOR ADMISSION ON 06/06/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

K.THANKAPPAN, J.

CRL. L.P. NO. 272 OF 2007

Dated this the 6th day of June, 2007

O R D E R

This petition for special leave to appeal is filed against the judgment in S.T.C. No.5278 of 2005 on the file of the Judicial First Class Magistrate's Court- II, Kannur. The petitioner - complainant filed the complaint against the first respondent herein alleging commission of offence punishable under Section 138 of the Negotiable Instruments Act, 1881.

2. The allegation in the complaint was that the accused - first respondent herein borrowed from the petitioner an amount of Rs.50,000/- and issued Exts.P1 and P2 cheques for Rs.30,000/- and Rs.20,000/- respectively towards discharge of the above liability which when presented to the bank for encashment were dishonoured for want of sufficient funds in the account of the first respondent. After complying with the statutory provisions, the petitioner filed the complaint. To prove the case against the first respondent, the petitioner was examined as PW.1 and the Manager

of the bank was examined as PW.2 and Exts.P1 to P7 were produced. On closing the evidence of the complainant, the accused was questioned under Section 313 Cr.P.C. Denying the transaction alleged in the complaint, the accused stated that he and the petitioner were friends and that he had borrowed an amount of Rs.50,000/- from the petitioner during the year 1983-84 and had issued three blank cheques and that two of the cheques were misused by the petitioner. To prove his case, the first respondent himself was examined as DW.1 and Exts.D1 to D4 were produced. Considering the entire evidence, the trial court found that the petitioner failed to prove the case against the first respondent. The trial court also found that the case set up by the first respondent was more probable and acquitted him.

3. Heard the learned counsel appearing for the petitioner and perused the records made available before this Court. The specific case of the petitioner is that the first respondent borrowed from him an amount of Rs.50,000/- during the year 2003 and the cheques issued towards discharge of the said liability were dishonoured due to insufficiency of funds in the account of the first respondent. The first respondent has a case that he had borrowed the money during 1983-84 and that the cheques in question were issued in connection with that transaction. The court

below relied on the evidence of DW.1 and Exts.D1 to D4 and found that the first respondent had filed a complaint before the Commissioner of Police for return of the cheques he had given to the petitioner when he had availed of the loan. The trial court also found that the said case was referred by the police taking the stand that the matter was a civil dispute. In the facts land circumstances of the case, this Court is of the view that the trial court correctly appreciated the evidence adduced by the accused - first respondent. Hence, the impugned judgment requires no interference.

The Crl. Leave Petition is accordingly dismissed.

(K.THANKAPPAN, JUDGE)

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